IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 101 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
M/S.SANSKAR TRUST - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR JUSTICE R. S. GARG
and
HONOURABLE MR JUSTICE D.H. WAGHELA

Date : 04/10/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Heard Mr Manish R Bhatt, learned counsel for the Revenue. None for the respondent-assessee, though

served.

2. The Income Tax Appellate Tribunal, Ahmedabad Bench 'A', under the directions of this High Court issued under section 256 (2) of the Indian Income Tax Act, 1961, has referred the following question for opinion of this Court which arises out of Income Tax Appeals No. 3668, 3669 and 3671/Ahd/1990 relating to Assessment Years 1983-84, 1984-85 and 1985-86:

> *"Whether the Appellate Tribunal is right in law and on facts in cancelling the penalty levied, when the assessee trust, as per the opinion of the Assessing Officer was a discretionary trust".*

From the statement of the case, it would appear that after holding the assessee-Trust as a discretionary Trust not entitled to the benefits of a specific Trust, the Assessing Officer proposed tax at marginal maximum rate and accordingly imposed penalty. The order of the Assessing Officer that the Assessee-Trust was not a specific Trust, was set aside by the CIT (Appeals). When the matter relating to penalty came up before the CIT (Appeals), he observed that as the Trust was a specific Trust, no penalty could be

levied. The Appellate Tribunal had confirmed both the orders passed by the CIT (Appeals) relating to quantum and the penalty proceedings.

3. In ITR No.96 of 1996, in the matter of the ***Commissioner of Income Tax v. Sanskar Trust,*** which we have decided today itself, we have held that the assessee, Sanskar Trust is a specific Trust. Once it is held that the assessee is a specific Trust, then tax at marginal maximum rate could not be levied, and once such tax could not be levied, there would be no shortage of payment of tax and penalty proceedings therefore could not be continued or finalised. In case the penalty proceedings were concluded, the same cannot be allowed to stand because the very foundation for and order in penalty proceedings is upset and has become *nonest.* We uphold the order passed by the Appellate Tribunal and the question is answered in affirmative against the interest of the Revenue. The Reference stands disposed of. No costs.

[R. S. Garg, J.]

[D. H. Waghela, J.]

msp